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Group, Inc., CXO Media, Inc. and Steve Ragan

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming  
limited liability company, MARK  
FERRIS, an individual, MATT FERRIS,  
an individual, and AMBER PAUL, an  
individual,

Plaintiffs,

vs.

No. 2:17-cv-105-SAB

DEFENDANT CXO MEDIA, INC.'S  
ANSWER

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1 KROMTECH ALLIANCE  
2 CORPORATION, a German corporation,  
3 CHRIS VICKERY, an individual, CXO  
4 MEDIA, INC., a Massachusetts  
5 corporation, INTERNATIONAL DATA  
6 GROUP, INC., a Massachusetts  
7 corporation, and STEVE RAGAN, an  
individual, and DOES 1-50,

Defendants.

8 Defendant CXO Media, Inc. ("CXO") respectfully submits this Answer to  
9 Plaintiffs' Complaint (ECF No. 1) as follows:

10  
11 **I.**

12 **RESPONSES TO PLAINTIFFS' ALLEGATIONS**

13 1-2. CXO is without sufficient information at this time to admit or deny the  
14 allegations in paragraphs 1-2 of the Complaint and therefore denies the allegations  
15 pursuant to Fed. R. Civ. P. 8(b)(5).  
16

17 3. Denied.

18 4-5. CXO is without sufficient information at this time to admit or deny the  
19 allegations in paragraphs 4-5 of the Complaint and therefore denies the allegations  
20 pursuant to Fed. R. Civ. P. 8(b)(5).  
21

22 6. Denied.  
23

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1           7.     CXO denies that it engaged in any illegal actions causing any damage to  
2 Plaintiffs' businesses, reputations, livelihoods, and physical or mental health. CXO is  
3 without sufficient information at this time to admit or deny the remaining allegations in  
4 paragraphs 7 of the Complaint and therefore denies the allegations pursuant to Fed. R.  
5 Civ. P. 8(b)(5).  
6

7           8.     CXO is without sufficient information at this time to admit or deny the  
8 allegations in paragraphs 8 of the Complaint and therefore denies the allegations pursuant  
9 to Fed. R. Civ. P. 8(b)(5). CXO, however, denies any wrongdoing or that Plaintiffs are  
10 entitled to any relief.  
11

12           9.     Admitted.

13           10.    Admitted.

14           11.    Admitted.

15           12.    Admitted.

16           13.    Admitted.

17           14.    Admitted.

18           15.    CXO admits that venue is proper but denies any acts of illegal computer  
19 access.  
20

21           16-21.   CXO is without sufficient information at this time to admit or deny  
22 the allegations in paragraphs 16-21 of the Complaint and therefore denies the allegations  
23  
24

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1 pursuant to Fed. R. Civ. P. 8(b)(5).

2 22. Admitted.

3 23. CXO admits that International Data Group, Inc. is a Massachusetts  
4 corporation but denies that it is the parent corporation of CXO.  
5

6 24. CXO is without sufficient information at this time to admit or deny the  
7 allegations in paragraph 24 of the Complaint and therefore denies the allegations pursuant  
8 to Fed. R. Civ. P. 8(b)(5).  
9

10 25. CXO admits that Ragan is an employee of CXO but denies the remaining  
11 allegations of paragraph 25.

12 26-37. CXO is without sufficient information at this time to admit or deny  
13 the allegations in paragraphs 26-37 of the Complaint and therefore denies the allegations  
14 pursuant to Fed. R. Civ. P. 8(b)(5).  
15

16 38. CXO denies that it is owned by International Data Group, Inc. CXO admits  
17 the remaining allegations of paragraph 38.

18 39. Admitted except that the actual quote was: "This is the story of how River  
19 City Media (RCM), Alvin Slocombe, and Matt Ferris, accidentally exposed their entire  
20 operation to the public after failing to properly configure their Rsync backups."  
21

22 40. CXO admits that the article included the quote "This is the story of how  
23 River City Media (RCM), Alvin Slocombe, and Matt Ferris, accidentally exposed their  
24

1 entire operation to the public after failing to properly configure their Rsync backups.”  
2 CXO otherwise denies the allegations in paragraph 40.

3  
4 41. CXO is without sufficient information at this time to admit or deny the  
5 allegation in paragraph 41 of the Complaint regarding what “River City’s records show”  
6 and therefore denies the allegation pursuant to Fed. R. Civ. P. 8(b)(5). The remaining  
7 allegations in paragraph 41 are denied.

8  
9 42-48. CXO is without sufficient information at this time to admit or deny  
10 the allegations in paragraphs 42-48 of the Complaint and therefore denies the allegations  
11 pursuant to Fed. R. Civ. P. 8(b)(5).

12  
13 49. CXO denies that it or Ragan ever publicly announced an unlawful computer  
14 hacking by Defendants. CXO is without sufficient information at this time to admit or  
15 deny the remaining allegations in paragraph 49 of the Complaint and therefore denies the  
16 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

17  
18 50. CXO is without sufficient information at this time to admit or deny the  
19 allegations in paragraph 50 of the Complaint and therefore denies the allegations pursuant  
20 to Fed. R. Civ. P. 8(b)(5).

21  
22 51. CXO denies that it or Ragan “purposefully attack[ed] and compromise[ed]  
23 River City’s Zabbix server” and “effectively hamstrung River City’s ability to detect and  
24 stop their cyberattack.” CXO is without sufficient information at this time to admit or

1 deny the remaining allegations in paragraph 51 of the Complaint and therefore denies the  
2 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

3  
4 52. Denied as to CXO and Ragan. CXO is without sufficient information at this  
5 time to admit or deny the allegations in paragraph 52 of the Complaint as they relate to  
6 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

7 53-56. CXO is without sufficient information at this time to admit or deny  
8 the allegations in paragraphs 53-56 of the Complaint and therefore denies the allegations  
9 pursuant to Fed. R. Civ. P. 8(b)(5).

10  
11 57. Denied as to CXO and Ragan. CXO is without sufficient information at this  
12 time to admit or deny the allegations in paragraph 57 of the Complaint as they relate to  
13 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

14  
15 58. Denied as to CXO and Ragan. CXO is without sufficient information at this  
16 time to admit or deny the allegations in paragraph 58 of the Complaint as they relate to  
17 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

18  
19 59. CXO denies that it or Ragan misappropriated or converted any funds and  
20 admits that they would have had no authority to do so.

21 60. Denied.

22 61. Denied as to CXO and Ragan. CXO is without sufficient information at this  
23 time to admit or deny the allegations in paragraph 61 of the Complaint as they relate to

1 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

2 62. CXO is without sufficient information at this time to admit or deny the  
3 allegations in paragraph 62 of the Complaint and therefore denies the allegations pursuant  
4 to Fed. R. Civ. P. 8(b)(5).  
5

6 63-64. Denied.

7 65. CXO admits that Ragan authored the article titled "Spammers expose their  
8 entire operation through bad backups" located at  
9 [https://www.csoonline.com/article/3176433/security/spammers-expose-their-entire-](https://www.csoonline.com/article/3176433/security/spammers-expose-their-entire-operation-through-bad-backups.html)  
10 [operation-through-bad-backups.html](https://www.csoonline.com/article/3176433/security/spammers-expose-their-entire-operation-through-bad-backups.html) dated March 6, 2017 ("Ragan Article"). CXO  
11 admits that there is an article titled "Spammerge: The Fall of an Empire" located at  
12 <https://mackeeper.com/blog/post/339-spammerge-the-fall-of-an-empire> dated June 3,  
13 2017 ("Vickery Article"). CXO denies the remaining allegations in paragraph 65.  
14  
15

16 66. CXO admits that the Vickery Article states that "RCM masquerades as a  
17 legitimate marketing firm while, per their own documentation, being responsible for up to  
18 a billion daily email sends." CXO admits that the Vickery Article includes the words  
19 "illegal hacking". CXO denies the remaining allegations of paragraph 66.  
20

21 67. CXO is without sufficient information at this time to admit or deny the  
22 allegations in paragraph 67 of the Complaint and therefore denies the allegations pursuant  
23 to Fed. R. Civ. P. 8(b)(5). CXO denies that it or Ragan wrongfully caused any harm to  
24

1 RCM.

2 68. CXO denies that it or Ragan made any defamatory statements. CXO is  
3 without sufficient information at this time to admit or deny the remaining allegations in  
4 paragraph 68 of the Complaint and therefore denies the allegations pursuant to Fed. R.  
5 Civ. P. 8(b)(5).  
6

7 69. CXO is without sufficient information at this time to admit or deny the  
8 allegations in paragraph 69 of the Complaint and therefore denies the allegations pursuant  
9 to Fed. R. Civ. P. 8(b)(5).  
10

11 70. CXO admits publishing the Ragan Article. CXO denies the remaining  
12 allegations of paragraph 70.  
13

14 71. CXO admits that the Vickery Article includes the quotes "RCM  
15 masquerades as a legitimate marketing firm while, per their own documentation, being  
16 responsible for up to a billion daily email sends" and "How can a group of about a dozen  
17 people be responsible for one billion emails sent in one day? The answer is a lot of  
18 automation, years of research, and fair bit of illegal hacking techniques". CXO denies  
19 the remaining allegations of paragraph 71.  
20

21 72. CXO admits that the Vickery Article includes the statement that "Purposely  
22 throttling your own machinery to amass open connections on someone else's server is a  
23 type of Slowloris attack [[https://en.wikipedia.org/wiki/Slowloris\\_\(computer\\_security\)](https://en.wikipedia.org/wiki/Slowloris_(computer_security))]."  
24

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1 CXO denies the remaining allegations of paragraph 72.

2 73. CXO admits that the Ragan Article includes the following statements:

- 3
- 4 • (quoting Vickery): "Once we concluded that this was indeed related to a
- 5 criminal operation, it was decided that we should approach law enforcement and
- 6 the affected companies (like Microsoft and Yahoo) before making any attempts
- 7 at contacting the spammers directly."
- 8
- 9 • "In the RCM chat logs, McKeown is respected for his scripting work. His
- 10 efforts enabled RCM to exploit a number of providers in order to inbox offers."
- 11
- 12 • "'Nobody would knowingly give their email address to spammers, so they have
- 13 to be tricked into it. Usually, there is some kind of offer for a 'free gift' in
- 14 exchange for giving up an email address and personal information. The fine
- 15 print of these offers allows the company to share their address with their
- 16 'partners' which ends up also being their partner's partners, and their partner's
- 17 partner's partners, until every spammer on the planet has their address,'
- 18 explained Spamhaus' Mike Anderson. He goes on to explain such address lists
- 19 are the lifeblood of the industry, and they're constantly being analyzed through
- 20 tracking systems - examining which addresses are viewing spam ads, which
- 21 ones are clicking on them, and which ones are buying. 'Meanwhile, the original
- 22
- 23
- 24

1 contract for handing over the address is never fulfilled, since it turns out to be  
2 impossible to redeem the 'free gift' or only with extreme difficulty. And of  
3 course these addresses never go through a confirmation process, to ensure it's  
4 the real owner of the address doing the signup.”

5  
6 CXO denies the remaining allegations of paragraph 73.

7 74. CXO admits that the Ragan Article included a link to the Vickery Article but  
8 denies the remaining allegations of paragraph 74.

9  
10 75. Denied that the statements above are false. CXO is without sufficient  
11 information at this time to admit or deny the remaining allegations in paragraph 75 of the  
12 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

13 76. Denied.

14 77-78. Admitted.

15  
16 79-81. CXO is without sufficient information at this time to admit or deny  
17 the allegations in paragraphs 79-81 of the Complaint and therefore denies the allegations  
18 pursuant to Fed. R. Civ. P. 8(b)(5).

19  
20 82. CXO hereby incorporates by reference the foregoing paragraphs as though  
21 fully set forth herein.

22 83. CXO admits Vickery is not an employee of RCM but is without sufficient  
23 information at this time to admit or deny the remaining allegations in paragraph 83 of the  
24

1 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

2 84-88. CXO is without sufficient information at this time to admit or deny  
3 the allegations in paragraphs 84-88 of the Complaint and therefore denies the allegations  
4 pursuant to Fed. R. Civ. P. 8(b)(5).  
5

6 89. Denied as to CXO and Ragan. CXO is without sufficient information at this  
7 time to admit or deny the allegations in paragraph 89 of the Complaint as they relate to  
8 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
9 8(b)(5).  
10

11 90. Denied as to any conduct by CXO or Ragan. CXO is without sufficient  
12 information at this time to admit or deny the allegations in paragraph 90 of the Complaint  
13 as they relate to Plaintiff RCM or the other Defendants and therefore denies the  
14 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
15

16 91. CXO hereby incorporates by reference the foregoing paragraphs as though  
17 fully set forth herein.  
18

19 92. CXO admits Vickery is not an employee of RCM but is without sufficient  
20 information at this time to admit or deny the remaining allegations in paragraph 92 of the  
21 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
22

23 93-96. CXO is without sufficient information at this time to admit or deny  
24 the allegations in paragraphs 93-96 of the Complaint and therefore denies the allegations

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1 pursuant to Fed. R. Civ. P. 8(b)(5).

2 97. Denied as to CXO and Ragan. CXO is without sufficient information at this  
3 time to admit or deny the allegations in paragraph 97 of the Complaint as they relate to  
4 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
5 8(b)(5).  
6

7 98. Denied as to any conduct by CXO or Ragan. CXO is without sufficient  
8 information at this time to admit or deny the allegations in paragraph 98 of the Complaint  
9 as they relate to Plaintiff RCM or the other Defendants and therefore denies the  
10 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
11

12 99. CXO admits that RCM seeks punitive and exemplary damages but denies  
13 that RCM is entitled to recover them and denies the remaining allegations of paragraph  
14 99.  
15

16 100. CXO admits that RCM seeks attorney's fees but denies that RCM is entitled  
17 to recover them.  
18

19 101. CXO hereby incorporates by reference the foregoing paragraphs as though  
20 fully set forth herein.

21 102. CXO admits Vickery is not an employee of RCM but is without sufficient  
22 information at this time to admit or deny the remaining allegations in paragraph 102 of  
23 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
24

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1           103-105. CXO is without sufficient information at this time to admit or deny  
2 the allegations in paragraphs 103-105 of the Complaint and therefore denies the  
3 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
4

5           106. Denied as to CXO and Ragan. CXO is without sufficient information at this  
6 time to admit or deny the allegations in paragraph 106 of the Complaint as they relate to  
7 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
8 8(b)(5).  
9

10           107. Denied as to CXO and Ragan. CXO is without sufficient information at this  
11 time to admit or deny the allegations in paragraph 107 of the Complaint as they relate to  
12 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
13 8(b)(5).  
14

15           108. Denied as to CXO and Ragan. CXO is without sufficient information at this  
16 time to admit or deny the allegations in paragraph 108 of the Complaint as they relate to  
17 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
18 8(b)(5).  
19

20           109. Denied as to any conduct by CXO and Ragan. CXO is without sufficient  
21 information at this time to admit or deny the allegations in paragraph 109 of the  
22 Complaint as they relate to the other Defendants and therefore denies the allegations  
23 pursuant to Fed. R. Civ. P. 8(b)(5).  
24

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1 110. CXO hereby incorporates by reference the foregoing paragraphs as though  
2 fully set forth herein.

3 111. CXO admits Vickery is not an employee of RCM but is without sufficient  
4 information at this time to admit or deny the remaining allegations in paragraph 111 of  
5 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
6

7 112-114. CXO is without sufficient information at this time to admit or deny  
8 the allegations in paragraphs 112-114 of the Complaint and therefore denies the  
9 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
10

11 115. Denied as to CXO and Ragan. CXO is without sufficient information at this  
12 time to admit or deny the allegations in paragraph 115 of the Complaint as they relate to  
13 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
14 8(b)(5).  
15

16 116. Denied as to any conduct by CXO and Ragan. CXO is without sufficient  
17 information at this time to admit or deny the allegations in paragraph 116 of the  
18 Complaint as they relate to Plaintiff RCM or the other Defendants and therefore denies  
19 the allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
20

21 117. CXO admits that RCM seeks punitive and exemplary damages but denies  
22 that RCM is entitled to recover them and denies the remaining allegations of paragraph  
23 117.  
24

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1 118. CXO hereby incorporates by reference the foregoing paragraphs as though  
2 fully set forth herein.

3 119-120. CXO is without sufficient information at this time to admit or deny  
4 the allegations in paragraphs 119-120 of the Complaint and therefore denies the  
5 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
6

7 121. Denied as to CXO and Ragan. CXO is without sufficient information at this  
8 time to admit or deny the allegations in paragraph 121 of the Complaint as they relate to  
9 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
10 8(b)(5).  
11

12 122. Denied as to CXO and Ragan. CXO is without sufficient information at this  
13 time to admit or deny the allegations in paragraph 122 of the Complaint as they relate to  
14 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
15 8(b)(5).  
16

17 123. Denied.

18 124. Denied as to CXO and Ragan. CXO is without sufficient information at this  
19 time to admit or deny the allegations in paragraph 124 of the Complaint as they relate to  
20 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.  
21 Civ. P. 8(b)(5).  
22

23 125. CXO hereby incorporates by reference the foregoing paragraphs as though  
24

1 fully set forth herein.

2 126-127. CXO is without sufficient information at this time to admit or deny  
3 the allegations in paragraphs 126-127 of the Complaint and therefore denies the  
4 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
5

6 128. Denied as to CXO and Ragan. CXO is without sufficient information at this  
7 time to admit or deny the allegations in paragraph 128 of the Complaint as they relate to  
8 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
9 8(b)(5).  
10

11 129. Denied as to CXO and Ragan. CXO is without sufficient information at this  
12 time to admit or deny the allegations in paragraph 129 of the Complaint as they relate to  
13 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
14 8(b)(5).  
15

16 130. Denied as to CXO and Ragan. CXO is without sufficient information at this  
17 time to admit or deny the allegations in paragraph 130 of the Complaint as they relate to  
18 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.  
19 Civ. P. 8(b)(5).  
20

21 131. CXO hereby incorporates by reference the foregoing paragraphs as though  
22 fully set forth herein.  
23

24 132. CXO is without sufficient information at this time to admit or deny the



1 allegations in paragraph 132 of the Complaint and therefore denies the allegations  
2 pursuant to Fed. R. Civ. P. 8(b)(5).

3  
4 133. Denied as to CXO and Ragan. CXO is without sufficient information at this  
5 time to admit or deny the allegations in paragraph 133 of the Complaint as they relate to  
6 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
7 8(b)(5).

8  
9 134. Denied as to CXO and Ragan. CXO is without sufficient information at this  
10 time to admit or deny the allegations in paragraph 134 of the Complaint as they relate to  
11 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
12 8(b)(5).

13  
14 135. Denied as to CXO and Ragan. CXO is without sufficient information at this  
15 time to admit or deny the allegations in paragraph 135 of the Complaint as they relate to  
16 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.  
17 Civ. P. 8(b)(5).

18  
19 136. CXO hereby incorporates by reference the foregoing paragraphs as though  
20 fully set forth herein.

21 137-138. CXO is without sufficient information at this time to admit or deny  
22 the allegations in paragraphs 137-138 of the Complaint and therefore denies the  
23 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

24  
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1           139. Denied as to CXO and Ragan. CXO is without sufficient information at this  
2 time to admit or deny the allegations in paragraph 139 of the Complaint as they relate to  
3 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
4 8(b)(5).  
5

6           140. Denied as to CXO and Ragan. CXO is without sufficient information at this  
7 time to admit or deny the allegations in paragraph 140 of the Complaint as they relate to  
8 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
9 8(b)(5).  
10

11           141. Denied as to any conversion by CXO or Ragan. CXO is without sufficient  
12 information at this time to admit or deny the allegations in paragraph 141 of the  
13 Complaint as they relate to the Plaintiffs or the other Defendants and therefore denies the  
14 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
15

16           142. CXO hereby incorporates by reference the foregoing paragraphs as though  
17 fully set forth herein.  
18

19           143. CXO admits Vickery is not an employee of RCM but is without sufficient  
20 information at this time to admit or deny the remaining allegations in paragraph 143 of  
21 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
22

23           144-146. CXO is without sufficient information at this time to admit or deny  
24 the allegations in paragraphs 144-146 of the Complaint and therefore denies the

1 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

2 147. Denied as to CXO and Ragan. CXO is without sufficient information at this  
3 time to admit or deny the allegations in paragraph 147 of the Complaint as they relate to  
4 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
5 8(b)(5).  
6

7 148. Denied as to CXO and Ragan. CXO is without sufficient information at this  
8 time to admit or deny the allegations in paragraph 148 of the Complaint as they relate to  
9 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
10 8(b)(5).  
11

12 149. Denied as to CXO and Ragan. CXO is without sufficient information at this  
13 time to admit or deny the allegations in paragraph 149 of the Complaint as they relate to  
14 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.  
15 8(b)(5).  
16

17 150-151. CXO is without sufficient information at this time to admit or deny  
18 the allegations in paragraphs 150-151 of the Complaint and therefore denies the  
19 allegations pursuant to Fed. R. Civ. P. 8(b)(5).  
20

21 152. CXO hereby incorporates by reference the foregoing paragraphs as though  
22 fully set forth herein.  
23

24 153-158. Denied.

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**Jury Demand**

CXO demands a jury for all claims and admits that Plaintiffs demand a jury as well.

**Plaintiffs' Request for Relief**

CXO denies that Plaintiffs are entitled to any relief in the section of the Complaint titled "XVI. REQUEST FOR RELIEF".

**Affirmative Defenses**

Without assuming the burden of proof where it otherwise rests with Plaintiffs, CXO asserts the following defenses:

1. Plaintiffs fail to state a claim upon which relief can be granted.
2. Plaintiff RCM is precluded from asserting its state-law claims because it is not registered to do business with the Washington Secretary of State. *See* RCW § 23.95.505.
3. Plaintiffs failed to mitigate their damages. On information and belief, Plaintiffs could have used reasonable efforts to mitigate their damages, including without limitation by not engaging in the conduct that is the subject of the Ragan Article and Vickery Article.
4. Plaintiffs' claims against CXO and Ragan are barred due to the privilege of

DEFENDANT CXO MEDIA, INC.'S ANSWER  
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1 fair comment on matters of public concern. The statements in the Ragan Article  
2 constituted a fair comment on a matter of public concern, and the statements were not  
3 made maliciously or based on false statements of fact.  
4

5 5. In the event that the defendant bears the burden of proving the truth of the  
6 statements at issue, Plaintiffs' claims against CXO and Ragan are barred because the  
7 statements in the Ragan Article were true and, at a minimum, substantially true and the  
8 gist, or "sting," of the Ragan Article was true.  
9

10 6. In the unlikely event of liability on the part of CXO, punitive and exemplary  
11 damages are unavailable to Plaintiffs under Washington law.

12 7. The statements in the Ragan Article are protected under the First  
13 Amendment to the U.S. Constitution and Article I Section 5 of the Washington  
14 Constitution.  
15

16 **Prayer**

17 For the foregoing reasons, Defendant CXO Media, Inc. respectfully requests that  
18 the Court dismiss Plaintiffs' suit against it, and grant it such other relief to which it may  
19 be justly entitled.  
20  
21  
22  
23  
24

Respectfully submitted this 6<sup>th</sup> day of April, 2017.

s/Kevin J. Curtis, WSBA No. 12085

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1 I hereby certify that on April 6, 2018, I electronically filed the foregoing with the  
2 Clerk of the Court using the CM/ECF System which will send notification of such filing  
3 to the following:  
4

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